

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ENERPOL, LLC,

Plaintiff,

v.

SCHLUMBERGER TECHNOLOGY
CORPORATION,

Defendant.

Civil Action No. 2:17-cv-394

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff EnerPol, LLC (“EnerPol”) makes and files this Complaint for Patent Infringement against Defendant Schlumberger Technology Corporation. In support of this Complaint, and to the best of its knowledge, information, and belief, EnerPol alleges as follows:

THE PARTIES

1. Plaintiff EnerPol is a limited liability company organized and existing under the laws of the State of Texas, with its principal place of business at 13921 Hwy 105 West #339, Conroe, Texas 77304.

2. On information and belief, Defendant Schlumberger Technology Corporation (“Schlumberger”) is a corporation organized and existing under the laws of the State of Texas, having a principal place of business at 300 Schlumberger Drive, Sugar Land, Texas 77478.

NATURE AND BASIS OF ACTION

3. EnerPol was founded in 2012 by Dr. Claude E. Cooke, Jr. and Brian Smiley. It is focused on developing products and services related to hydraulic fracturing and the application of environmentally-friendly, degradable polymers in the oil and gas industry. Dr. Cooke is the sole inventor of the Asserted Patent, which is owned by EnerPol.

4. Dr. Cooke's work in the oil and gas industry began long before his time at EnerPol. Dr. Cooke spent over thirty years as a scientist at ExxonMobil Upstream Research Company in Houston. During his time at ExxonMobil, Dr. Cooke researched many different aspects of oil and gas operations, including hydraulic fracturing, proppants, cementing, and enhanced oil recovery. Dr. Cooke's studies involving oil well cementing have been praised by the American Petroleum Institute as a "revelation" and "one of the industry's most important publications for the advancement of cementing technology." (See RUSSELL GOLD, THE BOOM: HOW FRACKING IGNITED THE AMERICAN ENERGY REVOLUTION AND CHANGED THE WORLD 280 (2014).)

5. Dr. Cooke is an inventor on nearly 150 U.S. and foreign patents and patent applications relevant to the oil and gas industry. Dr. Cooke's patents have been licensed by the oil and gas industry.

6. Dr. Cooke's contributions have been widely recognized by the oil and gas industry. For example, in 2006, the Society of Petroleum Engineers recognized Dr. Cooke as a "Legend of Hydraulic Fracturing" for contributing seminal innovations to the field. Only eight other people received this honor. And while most of the honorees had only a single contribution, Dr. Cooke had three contributions, including the invention of ceramic proppant particles, which was a landmark breakthrough in fracturing technology for ExxonMobil. (See *id.* at 270, 280.)

7. In addition to his successful career as a scientist and inventor, Dr. Cooke's interest in intellectual property law led him to study patent law and become a licensed patent attorney in the mid-1980s. His legal focus has been almost exclusively related to providing advice to his clients in oil and gas technology sector, which have included oilfield service companies, oil and gas research and engineering companies, high-tech companies, and individual inventors.

8. Brian Smiley is the Chief Executive Officer of EnerPol. Mr. Smiley is a former strategy and management consultant for The Boston Consulting Group in Dallas. While at The Boston Consulting Group, Mr. Smiley developed growth and acquisition strategies for global energy companies and supported an enhanced oil recovery project for a major oil company in the Middle East.

9. EnerPol currently has a portfolio of seven U.S. patents claiming technology developed by Dr. Cooke. EnerPol's patents have been cited in patents of several major companies in the oil and gas industry, including Schlumberger, Halliburton, and Baker Hughes.

10. EnerPol has sought to develop products related to its patents, including degradable polymer applications in the oil and gas industry. EnerPol's patented technology has undergone field testing over a period of several years pursuant to two grants totaling \$2.7 million from the United States Department of Energy that were jointly awarded to EnerPol and several other research partners, including Texas A&M University.

11. Schlumberger has adopted important and valuable technical innovations made by Dr. Cooke. Specifically, Schlumberger has developed and used hydraulic fracturing methods and well treatment services that incorporate Dr. Cooke's patented technical contributions. As a

result, Schlumberger has reaped substantial benefits from EnerPol's patented technologies, but has used these patented technologies without EnerPol's authorization, and without compensation.

JURISDICTION AND VENUE

12. EnerPol asserts claims for patent infringement against Schlumberger arising under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has jurisdiction over the subject matter of this action under at least 28 U.S.C. §§ 1331 and 1338.

13. Venue in this Court is proper under at least 28 U.S.C. §§ 1391 and 1400.

14. This Court has personal jurisdiction over Schlumberger because it is incorporated in the State of Texas and has purposely availed itself of the privileges and benefits of the laws of the State of Texas. Moreover, Schlumberger is subject to this Court's personal jurisdiction because it purposefully availed itself of the privileges of conducting business in the State of Texas and in this District. Schlumberger regularly conducts and solicits business within the State of Texas and within this District. Furthermore, EnerPol's causes of action arise directly from Schlumberger's business contacts and other activities in the State of Texas and this District.

ENERPOL'S ASSERTED PATENT

15. On September 27, 2005, the United States Patent and Trademark Office duly and lawfully issued United States Patent No. 6,949,491 ("the '491 patent"), entitled, "Method and Materials for Hydraulic Fracturing of Wells," to inventor Claude E. Cooke, Jr. A true and correct copy of the '491 patent is attached hereto as Exhibit A.

16. The '491 patent is currently in full force and effect.

17. All right, title, and interest in and to the '491 patent have been assigned to EnerPol, which is the sole owner of the '491 patent.

18. EnerPol asserts the '491 patent in this Complaint for Patent Infringement.

SCHLUMBERGER'S INFRINGING ACTIVITIES

19. On information and belief, Schlumberger provides a well treatment service that it refers to as its "BroadBand Sequence Fracturing Service" ("BroadBand").

20. On information and belief, Schlumberger imports, makes, and/or uses within the United States materials and equipment and performs methods with those materials and equipment that embody the inventions claimed in the '491 patent. Schlumberger offers to sell and/or sells services to customers related to the use of these materials and equipment. These services include, but are not limited to, Schlumberger's BroadBand service. (*See, e.g.,* Exhibit B.)

21. Schlumberger's acts of infringement have caused damage to EnerPol, and EnerPol is entitled to recover from Schlumberger the damages sustained by EnerPol as a result of Schlumberger's wrongful acts in an amount subject to proof at trial.

SCHLUMBERGER'S INFRINGEMENT OF THE '491 PATENT

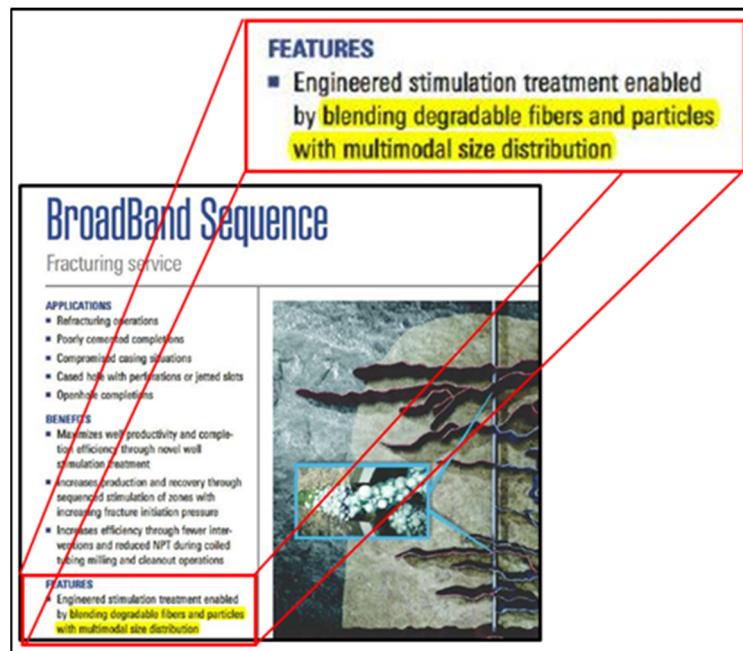
22. EnerPol repeats, alleges, and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs, as set forth above.

23. In the interest of providing detailed averments of infringement, EnerPol has identified below one exemplary claim to demonstrate infringement by one exemplary Schlumberger service. However, the selection of the exemplary claim and exemplary service should not be considered limiting, and any additional infringing Schlumberger products or services and infringed claims of the '491 patent will be disclosed in compliance with the Court's rules related to infringement contentions.

24. On information and belief, Schlumberger has provided and currently provides well treatment services that it refers to as its BroadBand Sequence Fracturing Service (“the SLB Accused Methods”).

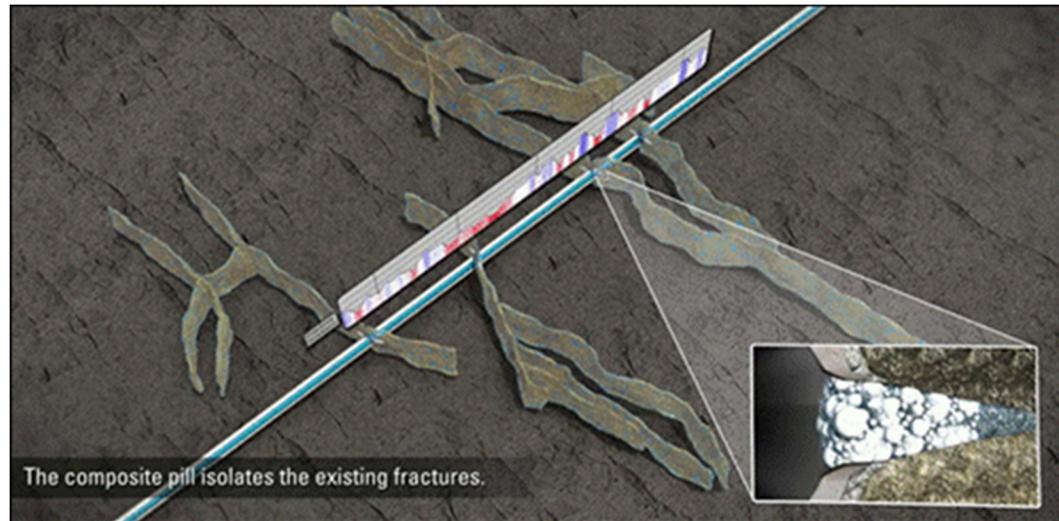
25. The SLB Accused Methods are a well treatment service that includes a method for treating formations around wellbores, where the formations have fracturing pressures, as outlined in detail below. (*See, e.g.*, Exhibit B.)

26. Schlumberger performs the SLB Accused Methods by transporting a degradable thermoplastic polymer in a solid bulk form down wellbores. For example, SLB’s Accused Methods involve transporting various liquids and particles of a degradable thermoplastic polymer, such as polylactic acid (PLA), down a wellbore. According to SLB’s product literature, these particles vary in size and shape, and include some particles that are several millimeters in diameter. (*See, e.g.*, Exhibit C; Exhibit D; Exhibit E at 8, 10.)

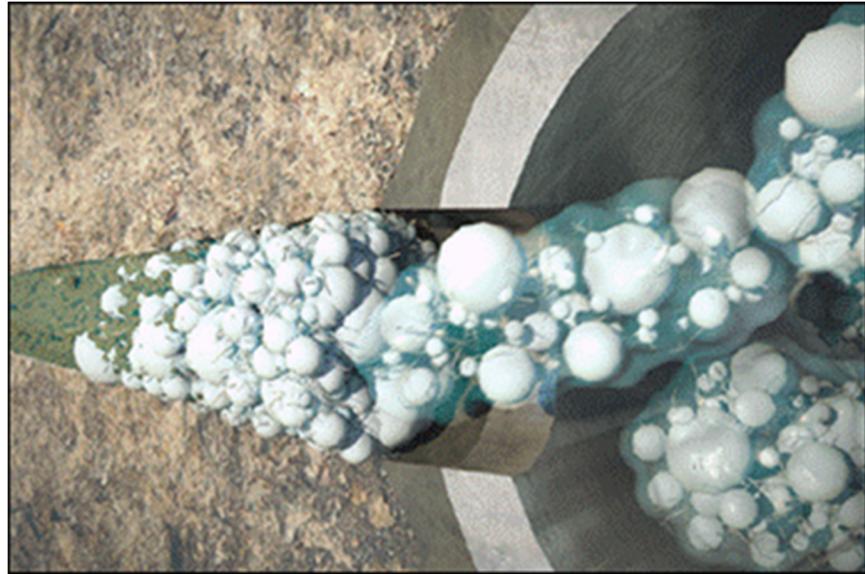


(Exhibit C.)

27. Schlumberger further performs the SLB Accused Methods by displacing a polymer-continuous liquid phase comprising the degradable thermoplastic polymer from the wellbore into the formation at a pressure greater than the fracturing pressure of the formation. For example, during the SLB Accused Methods, degradable polymer particles form a polymer-continuous liquid phase in the wellbore and in perforations in the wellbore casing, forming what Schlumberger refers to as a “polymer plug.” Schlumberger’s fracturing treatment displaces the polymer-continuous liquid phase comprising the degradable thermoplastic polymer from the wellbore perforations into the formation surrounding the wellbore. While these polymer plugs are in place, they divert fracturing fluid to unfractured regions of the formation, and therefore create new fractures. The polymer plugs then degrade over time, allowing hydrocarbons to be extracted from the entire formation. According to Schlumberger, the Accused SLB Methods significantly increase the total hydrocarbon output of wells. (*See, e.g.*, Exhibit D; Exhibit F at 5; Exhibit G).



(<http://www.slb.com/resources/VideoListingPage/video.aspx?id=7A5B3681-1326-3DAA-B7D4-2D7A5BAEE095>.)



(Exhibit D.)

28. As described above, the SLB Accused Methods infringe one or more claims of the '491 patent, including claim 1.

29. As a result of Schlumberger's infringing acts, EnerPol has suffered and continues to suffer damage. EnerPol is entitled to recover damages for Schlumberger's infringing acts, which in no event can be less than a reasonable royalty.

30. As a result of Schlumberger's infringing acts, EnerPol has been and continues to be irreparably injured and the remedies available to EnerPol at law are inadequate to compensate for that injury. EnerPol's irreparable injury will continue unless and until Schlumberger's continuing acts are restrained and enjoined by this Court.

31. EnerPol is entitled to injunctive relief enjoining and restraining Schlumberger, its officers, agents, servants, and employees, acting jointly or severally, and all persons acting in concert with it, and each of them, from further infringement of the '491 patent.

PRAYER FOR RELIEF

WHEREFORE, EnerPol respectfully requests that this Court:

- A. Enter judgment that Schlumberger has infringed one or more claims of the '491 patent, in violation of at least 35 U.S.C. § 271;
- B. Enter an order enjoining Schlumberger, its officers, agents, servants, representatives, and employees, and all persons acting in concert with them, and each of them, from infringing and indirectly infringing the '491 patent;
- C. Award EnerPol damages and/or a reasonable royalty for Schlumberger's infringement of the '491 patent, together with prejudgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284;
- D. Perform an accounting of Schlumberger's infringing activities through trial and judgment;
- E. Declare this case to be "exceptional" under 35 U.S.C. § 285 and award EnerPol its attorneys' fees, expenses, and costs incurred in this action; and
- F. Award EnerPol such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, EnerPol respectfully requests a trial by jury of any and all issues on which a trial by jury is available under applicable law.

Dated: May 5, 2017

Respectfully submitted,

FISH & RICHARDSON P.C.

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